(1) Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In the Supreme Court of the United States

CHESTER J. CHALUPOWSKI
MALGORZATA CHALUPOWSKI
Petitioners

v.

SHARON D. MEYERS
Respondent

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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Date: November 14, 2006

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the First Circuit erred in affirming the U.S. District Court's dismissal of the Petitioners' Complaint, when the Respondent's actions did meet the test set forth by the Supreme Court for determining whether a private actor has engaged in state action for the 42 U.S.C. § 1983 purposes.

2. Whether the Court of Appeals for the First Circuit erred in affirming the U.S. District Court's dismissal of the Petitioners' Complaint, when the U.S. District Court had jurisdiction to hear Petitioners' related claims under the Statute of Supplemental Jurisdiction, 28 U.S.C. § 1367.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

The Petitioners here and in the United States Court of Appeals for the First Circuit, are Chester J. Chalupowski and Malgorzata Chalupowski.

The Respondent here and in the United States Court of Appeals for the First Circuit, is Sharon D. Meyers.

Pursuant to Rule 29.6, Petitioners state that no parties are corporations

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Chester Chalupowski and Malgorzata Chalupowski respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the First Circuit was issued under docket number 05-2349, and is attached hereto in the Appendix. The opinion of the U.S. District Court, District of Massachusetts was issued under docket number 05-11138-GAO, and is attached hereto in the Appendix.

JURISDICTION

The judgment of the court of appeals was certified and issued as Mandate on August 23, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions relevant to this case are: 42 U.S.C. 1983; 28 U.S.C. § 1331; and 28 U.S.C. § 1367.

STATEMENT

Having suffered serious violations of their constitutional rights committed by the Respondent acting under color of law, on June 1, 2005, the Petitioners filed their Verified Complaint with the U.S. District Court for the District of Massachusetts, pursuant to 42 U.S.C. 1983, as well as 28 U.S.C. 1331, and 28 U.S.C. 1367.

District Court erroneously dismissed the Complaint on August 11, 2005. On August 17, 2005, the Petitioners filed their Notice of Appeal. On September 9, 2005, the record was certified and transmitted to the Court of Appeals for the First Circuit.

On October 24, 2005, the Petitioners filed their Brief. On November 25, 2005, the Respondent filed a noncompliant brief and was allowed additional time to file conforming brief. On December 6, 2005, the Respondent filed the Brief for the Appellee.

On December 22, 2005, the Petitioners filed their Reply Brief. On January 30, 2006, the court of appeals issued a notice that oral argument was not needed in the case. On June 16, 2006, the Court of Appeals issued its judgment confirming the District Court's erroneous dismissal of the petitioners' complaint.

Pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, on June 30, 2006, the Petitioners requested a panel rehearing and rehearing en banc. The request for panel rehearing and rehearing en banc was denied, and on August 23, 2006 the judgment of Court of Appeals was issued as Mandate.

REASONS FOR GRANTING THE PETITION

The Petitioners believe that courts below overlooked and misapprehended the facts of the case, misread the Petitioners' argument, misapplied the law and consequently, the Court's of Appeals decision is in conflict with the pre-existing case law established by the decisions of the U.S. Supreme Court, as well as other federal circuits. Consideration by this Court is therefore necessary to secure and maintain uniformity of the courts' decisions.

In addition, this case involves questions of exceptional imp[illegible]nce touching upon highly sensitive issues of the integr[illegible], of the judiciary and the accountability of court officers for their actions. Therefore this case merits a review by this Court and the petition for a writ of certiorari should be granted.

I. Respondent's actions do meet the tests set forth by the Supreme Court for determining whether a private actor has engaged in state action for Section 1983 purposes.

The facts of the Petitioners' District Court complaint are simple. Acting jointly with a number of state actors, Respondent turned the courts of the Commonwealth of Massachusetts into a private playground, subverted the judicial process, and in so doing violated the Petitioners' constitutional rights, and caused, among other harms, a depravation of property without due process of law. As a result of her actions, Respondent obtained a personal pecuniary advantage in the amount of at least $80,000, which was paid out of the Petitioners' personal assets unlawfully seized for that purpose.

In considering the Petitioners' arguments contained in their Brief and Reply Brief, the Court of Appeals disregarded and/or misapprehended the clearly stated facts.

The Court of Appeals erroneously assumed that the Respondent was being sued under 42 U.S.C. § 1983, because she used the capacity of a guardian ad litem. The fact that the Respondent used (albeit illegally) said capacity to accomplish her goal is not relevant in the context of the Petitioners' Section 1983 claim.

The Respondent is liable under Section 1983 because she aligned herself and reached the 'meeting of the minds' with the state actors jointly involved in actions that resulted in violation of constitutional rights of the Petitioners.

Having misapprehended the facts, the Court of Appeals issued a decision which conflicts with the U.S. Supreme Court precedent holding that, "Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of Section (s) 1983 actions." Adickes v. S.H. Kress & Co., 398 U.S.144, 152 (1970); and Dennis v. Sparks, 449 U.S. 24, 27 (1980).

The allegations in the Petitioners' complaint directly point to the situation defined in Adickes and Dennis. Respondent is a state actor for the purpose of Section 1983 claim and therefore the Court's of Appeals decision is in direct conflict with the pre-existing case law.

The Court's of Appeals decision is also in conflict with another aspect of the holding contained in Dennis, *supra.*

The Respondent was acting in concert with three state court judges. In June 2004 and January 2005, the Plaintiffs filed with the U.S. District Court separate Section 1983 actions against three state court judges. All three judges claimed the defense of absolute judicial immunity. (In fact the three state judges were not entitled to seek shelter from justice under the cloak of judicial immunity because they committed the challenged acts outside of the jurisdiction of their courts. This issue is, however, outside of the scope of this document).

The fact that the three state actors, with whom the Respondent reached the 'meeting of the minds,' were found (erroneously) immune from a suit does not preclude the Section 1983 action against the Respondent, a private person who willingly aligned herself with state actors.

In Dennis, *supra*, the U.S. Supreme Court held that,

> "the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability. Immunity does not change the character of the judge's action or that of his co-conspirators."

There is no question that the Respondent, a private person, conspired with the state actors. The $80,000 payout obtained by the Respondent pursuant to a court order issued by the state judge acting outside of his jurisdiction constitutes sufficient indication of the 'meeting of the minds' reached by the judge (a state actor) and the Respondent, the recipient of the $80,000. Said sum was paid from personal assets belonging to Chester and Malgorzata Chalupowski. As it is evidenced in the Petitioners' pleadings below, said assets were seized, liquidated and distributed pursuant to court orders which are void as a matter of law.

The half-page decision issued (Per Curiam) by the Court of Appeals on June 16, 2006, disregards, misinterprets and/or misapprehends the facts of this case and consequently misapplies the law.

The first sentence of the said decision labels the Petitioners as "pro se" appellants. While it is true that the Petitioners are acting pro se, the court does not point out in the same manner the fact that the Respondent (although an attorney) is also acting pro se.

In the same first sentence of the June 16, 2006 decision, the Court of Appeals makes another erroneous assumption that the Respondent "had acted as an advocate for a party to certain state probate court litigation." As it is evidenced in the Petitioners' Complaint, Respondent did not act as "an advocate" for anybody.

The Respondent acted as "an advocate" for herself. The Respondent is an attorney who brought several court actions through a puppet plaintiff. The Respondent herself was the real party in interest in all the state court proceedings since it can be ascertained that the only reason for bringing various court actions was to generate illegitimate income disguised as "attorney's fees."

The Respondent is the one who benefited from her actions. Her purported "ward" did not benefit from the Respondent's actions in any way, whatsoever. To the contrary, the estate in which the purported "ward" is one of three contingent beneficiaries, suffered tremendous financial loss due to the Respondent's actions commenced in the early 2002. The documented financial loss caused by the Respondent is estimated at over $96,000 per year. I.e. in order to generate $80,000 in purported "attorney's fees," the Respondent caused the subject estate to lose at least $480,000.

The District Court's conclusion, affirmed by the Court of Appeals that the Respondent "had not acted under color of state law" is erroneous. The Petitioners made a sufficient showing that the Respondent acting jointly with state actors, was a state actor for the purposes of the Section 1983 claim.

II. Since the U.S. District Court had jurisdiction over the Petitioners' federal question claims brought under 42 U.S.C. § 1983, the District Court also had jurisdiction to hear Petitioner's related claims under the statute of supplemental jurisdiction.

The Petitioners have a viable federal question action against the Respondent. The District Court had subject matter jurisdiction over the federal question action, and therefore, pursuant to the doctrine of supplemental jurisdiction, and under the statute of supplemental jurisdiction, 28 U.S.C. 1367, District Court had jurisdiction over all claims presented by the Petitioners in their verified complaint.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the court grant a Writ of Certiorari regarding this matter.

Respectfully submitted Pro Se

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November 14, 2006

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11138-GAO

CHESTER J. CHALUPOWSKI, Jr. and
MALGORZATA B. CHALUPOWSKI,
Plaintiffs

v.

SHARON D. MEYERS,
Defendant

ORDER
August 11, 2005

O'TOOLE, D.J.

After review of the verified complaint and the briefs filed in support and opposition to the defendant Sharon D. Meyers's motion to dismiss (Dkt. No.2), I conclude that the motion ought to be and hereby is GRANTED.

Although the complaint asserts that it is brought under 42 U.S.C. § 1983 and other federal statutes and constitutional provisions, the separately enumerated "counts" appear to assert only state law claims. If the only claims presented are state law claims, then subject matter jurisdiction is lacking, it being plain from the facts of the complaint that the parties are not citizens of different states, and dismissal is appropriate.

On the other hand, construing the complaint liberally in favor of the pro se plaintiffs, it may be assumed for present purposes that the complaint does set forth federal claims under § 1983. From the face of the complaint it is clear that the defendant is sued for actions taken while serving as a guardian ad litem appointed by a state court. In this capacity, the defendant was not acting "under color of state law" for purposes of § 1983. See Kirtley v. Rainey, 326 F.3d 1088, 1092-96 (9th Cir. 2003) (affirming dismissal of § 1983 claim against guardian ad litem who was not acting under color of state law); Meeker v. Kercher, 782 F.2d 153, 154-55 (10th Cir. 1986) (per curiam) (same); Malachowski v. City of Keene, 787 F.2d 704, 710-11 (1st Cir. 1986) (per curiam) (same).

Sections 1503, 1510 and 1511 of Title 18 of the United States Code, also referred to in the complaint, do not give rise to a civil action for damages. See Scherer v. United States, 241 F. Supp. 2d 1270, 1282 (D. Kan. 2003), and cases cited therein. See also Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989).

The action is dismissed for lack of subject matter jurisdiction.

It is SO ORDERED.

August 11, 2005 \s\ George A. O'Toole, Jr.
DATE DISTRICT JUDGE

APPENDIX B

Unites States Court of Appeals
For the First Circuit

No. 05-2349

CHESTER J. CHALUPOWSKI, JR.;
MALGORZATA B. CHALUPOWSKI,
Plaintiffs, Appellants,

v.

SHARON D. MEYERS,
Defendant, Appellee.

JUDGMENT

Entered: June 16, 2006

The cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

RICHARD CUSHING DONOVAN

Richard Cushing Donovan, Clerk

[cc. Mr. Chalupowski, Ms. Chalupowski & Ms. Myers]

APPENDIX C

Not for Publication in West's Federal Reporter
Citation Limited Pursuant to 1st Cir. Loc. R. 32.3
United States Court of Appeals
For the First Circuit

No. 05-2349

CHESTER J. CHALUPOWSKI, JR.;
MALGORZATA B. CHALUPOWSKI,
Plaintiffs, Appellants,

v.

SHARON D. MEYERS,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISRTICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. George A. O'Toole, Jr., U.S. District Judge]

Before
Lynch, Lipez and Howard
Circuit Judges.

Chester J. Chalupowski, Jr., on brief pro se and Magorzata B. Chalupowski on brief pro se.
Sharon D. Meyers and Meyers & Welch on brief for appellee.

June 16, 2006

Per Curiam. The pro se appellants appeal from the dismissal of their complaint against an attorney, who, pursuant to a court appointment as guardian ad litem, had acted as an advocate for a party to certain state probate court litigation. In an order dated August 11, 2005, the district court dismissed appellants' complaint for lack of subject matter jurisdiction, concluding that it presented state law claims. In the alternative, the court assumed that the complaint set forth § 1983 claims and, to that extent, dismissed it because the defendant had not acted under color of state law. After careful review of the appellate record and the appellants' contentions, we affirm, essentially for the reasons given by the district court.
Affirmed.

APPENDIX D

United States Court of Appeals
For the First Circuit

No. 05-2349

CHESTER J. CHALUPOWSKI, JR, ET AL.,
Plaintiffs, Appellants
v.
SHARON D. MEYERS,
Defendant, Appellee.

Before
Boudin, Chief Judge,
Torruella, Selya, Lunch, Lipez and Howard,
Circuit Judges

ORDER OF COURT

Entered: August 16, 2006

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Richard Cushing Donovan , Clerk

(stamp) MARGARET CARTER
By: _____
Chief Deputy Clerk.

[cc: Mr. Chalupowski, Ms. Chalupowski and Ms. Meyers]

APPENDIX E

United States Court of Appeals
For the First Circuit

No. 05-2349

CHESTER J. CHALUPOWSKI, JR.;
MALGORZATA B. CHALUPOWSKI,
Plaintiffs, Appellants

MANDATE
(stamp)

v.

SHARON D. MEYERS,
Defendant, Appellee.

JUDGMENT

Entered: June 16, 2006

This case came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and declared as follows: The judgment of the district court is affirmed.

By the Court:

(stamp) RICHARD CUSHING DONOVAN

Richard Cushing Donovan, Clerk

Stamp:
Certified and issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing
Donovan, Clerk

/s/ illegible

_____
Deputy Clerk
Date: AUG 23 2006

[cc. Mr. Chalupowski, Ms. Chalupowski & Ms. Myers.]

Date: AUG 23 2006

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
No. 05-2349

CHESTER J. CHALUPOWSKI, Jr.
MALGORZATA B. CHALUPOWSKI
Plaintiffs-Appellants
v.
SHARON D. MEYERS
Defendant-Appellee

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT OF MASSACHUSETTS

BRIEF FOR THE PLAI NTIFFS-APPELLANTS

JURISDICTIONAL STATEMENT

Pursuant to Rule 28 (a) (4) of the Federal Rules of Appellate Procedure, the Plaintiffs/Appellants hereby make the following jurisdictional statement:

Plaintiffs/Appellants claim federal jurisdiction pursuant to Article III, Paragraph, which extends the jurisdiction to cases arising under the U.S. Constitution.

Plaintiffs/Appellants brought their U.S. District Court action pursuant to Title 42 U.S. Code, Paragraph 1983 for violation of certain protections guaranteed to them by the First, Fifth, Eight, and Fourteenth Amendments of the Federal Constitution, by the Defendant acting under color of law.

The U.S. District Court issued an order of dismissal on August 11, 2005. Plaintiffs/Appellants filed their Notice of Appeal on August 17, 2005. Therefore their appeal is timely. This appeal was docketed with the U.S. Court of Appeals for the First Circuit on September 13, 2005. The order issued by the U.S. District Court on August 11, 2005, is a final order.

STATEMENT OF THE ISSUES

Plaintiffs/Appellants wish to present the following issues for this Honorable Court's consideration:

1. Whether an attorney purporting to act as guardian ad litem may be considered a state for the purpose of the claims brought under 42 U.S.C. 1983?
2. Whether a private party involved in an unlawful act perpetrated by a state actor, can be liable under 42 U.S.C. 1983?
3. Whether prima facie evidence of fraud on the court committed by a party constitutes a basis for deciding the case in favor of the opposing party?
4. Whether the defense of quasi-judicial immunity can be afforded to a person who purports to act as guardian ad litem for an individual who is neither a minor nor was ever found to be under any disability? Whether Rooker-Feldman Doctrine applies if the underlying state court proceedings are void due to the fact that the state court acted outside of its jurisdiction?

STATEMENT OF THE CASE

1. Plaintiffs filed their Verified Complaint *Appendix 6*-22, with the U.S. District Court, District of Massachusetts, on June 1, 2005. Plaintiffs' Complaint was docketed and Summons was issued under docket No. 05-11138-MEL; *Appendix 4 and 6.*
2. Plaintiffs brought their District Court action against an attorney, who while purporting to act as a court state appointed guardian ad litem, violated Plaintiffs' constitutional rights.
3. The Complaint was served upon Defendant on June 6, 2005, under the above specified docket number; *Appendix 4-5.*

4. On June 21, 2005, Plaintiffs received Defendant's response containing the following documents: (A) Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment on the Pleadings; (B) Defendant's Memorandum in Support of her Motion; (C) Defendant's sworn Affidavit; *Appendix 23*-43; together with over 200 pages of exhibits; *Appendix 45-268.*
5. Defendant's Response was provided to the Plaintiffs under a changed docket number. The number assigned by the District Court was 05-11138-MEL; *Appendix* 22. This number was changed to 05-11138-GAO; *Appendix 373-375.*
6. On July 6, 2005, Plaintiffs filed their opposition to Defendant's Motion to Dismiss; *Appendix 271-313.*
7. On July 11, 2005, Plaintiffs filed their Rule 56 (g) Motion for Contempt due to the fact that the sworn Affidavit filed with Defendant's Motion to Dismiss, contained numerous false and fraudulent statements; *Appendix 315-365.* There is no record in the U.S. District Court docket indicating that the Plaintiffs' Rule 56 (g) Motion was ever ruled upon.
8. On August 11, 2005, the U.S. District Court (O'Toole, J.) issued an order dismissing Plaintiffs' complaint; *Addendum 1-3.*
9. Plaintiffs' Notice of Appeal was docketed with the District Court on August 17, 2005; *Appendix 366-368.*
10. Plaintiffs' Appeal was docketed with the U.S. Court of Appeals for the First Circuit on September 9, 2005; *Appendix 369-372.*

STATEMENT OF FACTS

The action filed with the U.S. District Court arises from the violations of Plaintiffs' constitutional rights committed by the Defendant acting under color of law while perpetrating an elaborate legal scheme built by handling at the trial court level (Essex Probate and Family Court) cases which were dismissed, appealed and pending before the Appeals Court, therefore outside of the jurisdiction of the Essex Probate Court.

This 'perfect crime' disguised as legitimate litigation was perpetrated by targeting the estate of Mary Jane Chalupowski (85), mother of two daughters: Judith Chalupowski-Venuto (52) and Donna Chalupowski (51), (both chronically unemployed due to their sociopathic tendencies), and a son, Chester, (50), the only working member of the family – a successful businessman, musician, and a trustee of two family trusts.

The scheme was built by perfecting two previously failed attempts to defraud the Chalupowski family from its assets undertaken by Attorney Joseph P. Corona of Salem. In 1993, 1994, and 1995, Corona used Donna Chalupowski (suffering from a paranoid personality disorder confounded by substance abuse) as a dupe plaintiff in five vexatious court actions filed against every member of her immediate family.

After losing, abandoning, or voluntarily dismissing all his actions in the late 1996, Corona took a four-year break, and in December 2000, and January 2001, started the game over again by filing his second batch of vexatious cases on behalf of his dupe plaintiff against every member of her immediate family.

In December 2001 Corona faced another disappointment when three out of his four new cases were dismissed. This time however, he was left with one case still pending and with an ally, the Defendant in the instant case. Attorney Sharon D. Meyers in October 2001 got herself appointed a "guardian ad litem" for Judith Chalupowski-Venuto who is neither an infant, nor was ever found to be under any disability.

In this way the two lawyers, Meyers and Corona, found themselves in control of two pathologically dysfunctional plaintiffs readily lending their names to be used in the scheme.

All four of them had a vested interest in accessing not only the family assets kept in the two trusts (and pursuant to the provisions of the trusts not accessible as long as the mother, Mary Jane, is alive), but also in finding a way to steal the assets belonging to the only working member of the family, Chester, and his wife, Malgorzata, who is a physician and a Harvard Fellow.

At that point, the only thing the two lawyers needed to do was to accuse Chester of mishandling the assets of the family trusts, and to keep fueling the delusions of their dupe plaintiffs.

Since the only pending case was too simple to lend itself to manipulation and pertained to the money trust holding "only" $170,000 professionally managed by Fidelity Investments, Meyers and Corona decided to pretend that the three dismissed cases (pertaining to the realty trust) were still pending.

To accomplish this goal they kept filing various vexatious pleadings under four docket numbers (one correct and three belonging to cases dismissed, appealed, and pending before the Appeals Court). In this way, while relying on willful cooperation of the Probate Court clerks and judges, they generated hundreds of conflicting docket entries making it impossible to figure out what exactly was going on, let alone to notice the fact that there was actually only one case pending.

Amidst the intentionally created confusion, Meyers and Corona kept fabricating more and more false accusations against Chester. The false accusations were accepted by the Probate Court on their face value despite the fact that prima facie evidence contradicting the false claims was readily available in the court record.

In the summer of 2004, Meyers and Corona, supported by a gradually growing group of other dishonest opportunists, pulled a heist of a century when they managed to not only wrest the control of the two Chalupowski family Trusts, but were also allowed (by the court acting outside of its jurisdiction) to seize, liquidate and distribute among themselves over $500,000 of personal savings belonging to Chester and his wife. Defendant received at least $80,000 from the assets rightfully belonging to the Plaintiffs.

Apart from playing a crucial role at the Probate Court level, Defendant was instrumental in instituting an auxiliary stream of fraudulent actions perpetrated within the Appeals Court venue. Through her prior professional relationship with the Appeals Court Judge, Janis M. Berry, in February 2002, Defendant obtained a stay of the Salem District Court summary process judgments, by circumventing proper appellate procedure.

Judge Berry, while being fully aware that there was no valid appeal before her, did Attorney Meyers a favor and issued a stay. In August 2002, Judge Berry signed a 17-page order (apparently ghost-written by Meyers) upholding the stay she issued illegally in February 2002.

The details of Judge Berry's involvement in the scheme are summarized in a separate U.S. District Court action docket number 04-11277-GAO. Said action was dismissed by the U.S. District Court (O'Toole, J.) on September 10, 2004, one day after the Complaint was served on Defendant. The dismissal was appealed: U.S. Court of Appeals #05-1193, petition for panel rehearing is currently pending.

Plaintiffs are troubled by the fact that, unbeknownst to them, the case at hand was taken over by Judge O'Toole after it was assigned to be handled by Judge Lasker.

Considering the instances of documented tampering with the court documents perpetrated by the Defendant at the state court level, the Plaintiffs are perplexed by the fact that the original docket number designation of the case at hand appears to have been erased and replaced with a new docket number, as seen on the copies of the front page of the Complaint and of the Civil Cover Sheet attached hereto; *Appendix 373-375.*

SUMMARY OF THE ARGUMENT

The District Court's position asserted in its August 11, 2005 Order, is that the Defendant acted as guardian ad litem, and therefore does not fall under the umbrella of the 42 U.S.C. 1983 claim. Under the circumstances of this case, it can be easily proven that said assertion does not withstand scrutiny.

(A) If we assume, arguendo, that Defendant acted as guardian ad litem, there are well defined instances of cases that do classify guardians ad litem as state actors. This case falls squarely into this category.

(B) On the other hand, if we assume, arguendo, that Defendant acted as a private person, the legal standard is well-settled that when a private person is a willful participant in joint activity with the State or its agents, and as a result of this joint activity, violations of constitutional rights are committed, such private person, even though not an official of the State, can be liable under 42 U.S.C. 1983. The required "meeting of the minds" between the Defendant and the state actors (three state judges, state and local police officers) is well documented in this case.

(C) Prima facie evidence of fraud on the court committed by the Defendant in the conduct of the litigation, both within the federal and state venues, constitutes the basis for the reversal of the District Court's August 11, 2005 order.

(D) Other defenses (quasi-judicial immunity, Rooker-Feldman Doctrine) brought up by the Defendant in her motion to dismiss, but not addressed by the District Court order, also do not withstand scrutiny.

ARGUMENT

(A) Under the circumstances of this case the Defendant can be classified as "state actor" for the purpose of 42 U.S.C. 1983.

There are specific instances of cases that do classify guardians ad litem as state actors. As held in Snyder v. Talbot (Me. 1993) 836 F. Supp. 19, these instances "involve situations in which the guardian takes on substantial authority, conferred by the state, for long term involvement in overseeing a minor's or incompetent's well-being. *See*, for example, Thomas S. v. Morrow, 781 F.2d 367, 377-78 (4th Cir. 1986) (holding that state-appointed guardian who had custody of ward and acted together with or obtained significant aid from state officials was a "state actor" under section 1983)."

As it is specified in the Plaintiffs' Complaint and in their opposition to Defendant's motion to dismiss, the Defendant meets several of the above listed criteria. The Defendant has been using the capacity of a guardian ad litem (whether or not use of this capacity was officially authorized or lawful) from October 2001 till the present. Therefore, it can be argued that Defendant's involvement satisfied the "long-term" requirement. Defendant did "act together with" and did obtain "significant aid from the state officials" (this holds true whether or not this "aid" was officially authorized or lawful).

Plaintiffs clearly made the allegations to this effect in their pleadings, and therefore met their burden. Defendant failed to provide any evidence which would negate Plaintiffs assertions. Therefore, Plaintiffs' complaint should have not been dismissed on the basis that guardian ad litem cannot be considered a state actor for the purpose of the 42 U.S.C. §1983 claims.

(B) If the Defendant is considered to be acting as a private person, her actions undertaken in collusion with the state actors were committed under color of law

The alternative strategy resorted to by the Defendant, is her claim that she actually was not a guardian ad litem at all (which is closer to the truth, since the appointment was never legally justified: her "ward" is not a minor, and was never found to be incompetent). According to Defendant's own statement she was acting "more as a private person." *Appendix p. 29.*

This assertion does not help Defendant's position because law is well-settled in this matter since at least 1970, when a landmark case Adickes v. Kress, 398 U.S. 144 (1970) was decided by the U.S. Supreme Court, confirming the holding in United States v. Price, 383 U.S.787, 794 (1966), that, "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents."

Again, the joint activity and conspiracy between the Defendant and state officials (three judges, police officers) is clearly alleged in the Plaintiffs complaint. As stated in Adickes supra, "The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful," quotations omitted. Defendant's "private person" defense does not withstand scrutiny under the prevailing case law.

(C) Defendant committed fraud on the court.

Fraud committed by a party in the course of litigation constitutes a basis for deciding the case in favor of the opposing party.
As stated and documented in the Plaintiffs' Rule 56 (g) Motion, *Appendix 315-365,* Defendant committed fraud on the court. As stated in the Plaintiffs' Complaint, *Appendix 9-10*, this not the first time Defendant resorted to a fraud to accomplish her goals. "Her deceits were substantial, deliberate, and went to the heart of the case." As held in Hull v. Municipality of San Juan, 356 F.3d 98 (1st Cir.), finding of fraud in the conduct of litigation may be the basis for ruling in favor of the opposing party.

(D) The defenses of quasi-judicial immunity, or Rooker-Feldman doctrine cannot be afforded to the Defendant in this case.

Although the District Court order did not reach these issues, Plaintiffs wish to reiterate and incorporate herein their arguments related to these matters and presented in their Opposition to Defendant's Motion to Dismiss, *Appendix 281-282.*

CONCLUSION

The case was erroneously dismissed by the U.S. District court. The dismissal should be reversed.

Respectfully submitted

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Dated: October 24, 2005

CERTIFICATE OF SERVICE

We, Chester and Malgorzata Chalupowski, hereby certify that on this date two true copies of the foregoing brief and appendix were served on the Defendant via priority mail, postage prepaid.

Chester Chalupowski Malgorzata Chalupowski

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 05-2349

CHESTER J. CHALUPOWSKI, Jr. et al.
Plaintiffs-Appellants
v.
SHARON D. MEYERS
Defendant-Appellee

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES
DISTRICT COURT OF MASSACHUSETTS

REPLY BRIEF FOR THE PLAINTIFFS-APPELLANTS

INTRODUCTION

In response to the statements made by the Defendant-Appellee, the Plaintiffs-Appellants wish to bring to this Court's attention the following facts:

Contrary to the Defendant's false assertion, the U.S. District Court had jurisdiction to hear Plaintiffs claims filed under 42 U.S.C. 1983, and therefore, pursuant to the statute of supplemental jurisdiction, 28 U.S.C. 1367, the U.S. District Court could also hear Plaintiffs' related claims.

Defendant's Brief does not rise to the level of appellate argument because it fails to address the explicit questions posed by the Plaintiffs/Appellants in the *Statement of the Issues* part of their Brief.

Also, Defendant glosses over the matters brought up in the *Statement of the Case* part of their Brief and pertaining to possible tampering with the Court record.

Furthermore, the Defendant confuses the *Statement of the Case* and *Statement of Facts* parts of the Appellants' Brief. Said parts play a distinct role in an appellate brief and should not be confused.

While referring to the *Statement of Facts* contained in the Plaintiffs' Brief, p.5-9, Defendant (apparently desperate to keep the facts secret) is pleading with this Court to "disregard" statement of facts "proffered by the pro se Appellants."

In a misguided effort to undermine the Plaintiffs' credibility, Defendant reminds this Court three times on one page (p. 2) that the Appellants are acting pro se.

It is true that Plaintiffs/Appellants are proceeding in this action pro se. It is also true that over 90% of actions filed by pro se litigants do not meet the basic procedural and substantive requirements of well-pleaded arguments. This does not mean however that the content of pleadings filed by pro se litigants should be disregarded if said content does not suit the opposing party.

Indeed, the suggestion placed by the Defendant in her Brief, can be interpreted as designed to defraud and to seek an unconscionable advantage, and as such may constitute a willful violation of Rule 11 of the Federal Rules of Civil Procedure.

The facts which Defendant is begging this Court to disregard are simple. Acting jointly with a number of state actors, Defendant turned the courts of the Commonwealth of Massachusetts into a private playground, subverted the judicial process and in so doing inflicted injury on the Plaintiffs, violated the Plaintiffs' constitutional rights, and caused, among other harms, a depravation of property without due process of law.

ARGUMENT

I. Defendant's actions do meet the tests set forth by the Supreme Court for determining whether a private actor has engaged in state action for section 1983 purposes.

Although throughout the entire Brief, Appellant keeps referring to herself as "guardian ad litem," this reference is inappropriate and misleading.

As it is clearly indicated in the Plaintiffs' Brief and Appendix, Defendant was never a legitimate guardian ad litem. Defendant, assisted by the Essex Probate Court judge, unlawfully used Chapter 201, Section 34 of the Massachusetts General Laws, to legitimatize her involvement in an ongoing illegal scheme fabricated by another lawyer (Joseph P. Corona of Salem) and based on re-trying cases (barred by res judiciata) which were dismissed, appealed and pending before the Appeals Court, therefore outside of the jurisdiction of the trial court.

Defendant's purported "ward" (Judith Chalupowski-Venuto) is neither a minor nor a person under any disability. Defendant exploited the ignorance and greed of her purported "ward," who readily accepted the free (to her) legal services which she did not need in the first place.

The purported "ward" most likely never realized that she was being used as a dupe in the scheme masterminded by the Defendant in collusion with other officers of the court, and aimed at defrauding the Chalupowski family from all its assets.

Incidentally, contrary to Defendant's assertion made in her Brief, p.5, her purported "ward" did not benefit from her actions at all, while the Defendant herself, together with other officers of the court, derived considerable financial benefits from the scheme. Just the documented pecuniary gain obtained by the Defendant reached over $80,000.

The question whether legitimate guardians ad litem are liable under 42 U.S.C. 1983, is immaterial here. The Plaintiffs cite in their Brief the case Thomas S. v. Morrow, 781, F2d 367, 377-78 (4th Cir. 1986), only to illustrate the fact that even legitimate GALs may be sometimes liable under 42 U.S.C. 1983.

Therefore, Defendant's and District Court's reliance on case law illustrating the fact that GALs are usually not liable under par. 1983, is erroneous.

Defendant is liable for entirely different reason. Defendant is liable under 42 U.S.C. par 1983, not because she was a guardian ad litem (which she was not, she illegally used GAL's title to be in a better position to perfect the scheme), but because she, a private party, aligned herself with the state actors and "invoked state authority in such a way that [she] should be considered ... state actor." Davis v. Union National Bank, 46 F.3d 24, 25 (7th Cir. 1994).

The tests set forth by the Supreme Court for determining whether a private actor has engaged in state action for section 1983 purposes: (1) the "public function" test; (2) the state compulsion test; (3) the "nexus" test; and (4) the "joint action" test; have to be analyzed in the context of this case.

Defendant in her brief tries to mislead this Court by implying that these tests should be applied to her actions in the way they were applied in Kirtley v. Rainey, 326 F.3d 1088, 1092-96 (9th Cir. 2003). This is a trick which will not work here, because the GAL in the Kirtley case, as GALs in other similar cases, was legitimately appointed.

If we apply the four tests mentioned above to the Defendant in this case - a private actor who willingly aligned herself with numerous state actors, we will easily conclude that not one but all of the tests do apply here and do prove that the Defendant was a willful participant in joint action closely intertwined with various state actors, including several police officers and three state court judges without whose assistance and active encouragement Defendant would never be able to do what she did.

The "meeting of the minds" criterion between the Defendant and the state actors can be easily established here.

Interestingly, Defendant (most likely inadvertently) provides in her Brief an explicit example of an ongoing understanding reached between her and the state judges.

According to Defendant's own statement, Brief for the Appellee, p. 6, she "was awarded fees from the trust estate." This was done while the purported "ward," Judith Chalupowski-Venuto, does not have any present interest in any of the two trusts holding the assets belonging to the Chalupowski family. Said trusts cannot be held accountable for any legal fees (legitimate or not) incurred by Judith Chalupowski-Venuto.

However, Defendant "was awarded" by the state court judge over $80,000 "from the trust estate" in "fees" allegedly generated in the process of perpetrating the fraudulent scheme. The state court judge "awarded" Defendant $80,000 (to be paid from the trust not responsible for any third party legal fees) while knowingly acting on cases dismissed, appealed and pending before the Appeals Court, therefore outside of the jurisdiction of the trial court.

In June 2004 and January 2005, the Plaintiffs filed with the U.S. District Court separate 1983 actions against the state court judges involved in the scheme. All three judges claimed the defense of absolute judicial immunity.

The issue whether or not the three state judges were entitled to seek shelter from justice under the cloak of absolute judicial immunity, is outside of the argument at hand. There is no question however, that the three judges are state actors. Therefore, any 'associate' of said judges who is "a willful participant in joint action with the State or its agents," is deemed to be state actor for the purpose of section 1983. Dennis v. Sparks, 449 U.S. 24, 27 (1980).

Defendant is a willful participant in joint action with the state actors. The fact that the actions against the three state judges have been dismissed does not mean that the action against the Defendant should be dismissed as well.

In Dennis v. Sparks, 449 U.S. 24 (1980), the Supreme Court of the United States unanimously held that:

> "The action against the private parties accused of conspiring with the judge is not subject to dismissal. Private persons, jointly engaged with state officials in a challenged action, are acting 'under color' of law for purposes of paragraph 1983 actions. And the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators. Historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge. Nor has the doctrine of judicial immunity been considered historically as excusing a judge from responding as a witness when his co-conspirators are sued, even though a charge of conspiracy and judicial corruption will be aired and decided. *Gravel v. United States,* 408 U.S. 606, distinguished. The potential harm to the public from denying immunity to co-conspirators if the fact-finder mistakenly upholds a charge of corrupt conspiracy is outweighed by the benefits of providing remedy against **those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons.**" (emphasis added) Pp. 27-32.

Oddly, the case Dennis v. Sparks supra, is actually cited by the Defendant in her Brief of the Appellee, *p.* 7, as one allegedly supporting her argument. Considering the fact that the landmark case is so well known that it even found its way to the law school classrooms, the dishonest trick applied by the Defendant seems to be somewhat immature, yet consistent with the Defendant's unethical behavior demonstrated throughout the litigation subject of this case.

Specifically, Defendant takes out of context one sentence from Dennis v. Sparks. Said sentence reads:

> "Of course, merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a join actor with the judge."

This sentence sounds good for the Defendant's purposes, so she stops the quotation there and fails to acknowledge that the holding in Dennis v. Sparks reads in fact as follows:

> "But here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability. Immunity does not change the character of the judge's action or that of his co-conspirators."

In the action at hand, as in Dennis, the allegations presented by the Plaintiffs clearly indicate the existence of corrupt conspiracy as a result of which Plaintiffs' constitutional rights were violated. In Dennis v. Sparks, the Supreme Court upheld its holding in Adickes v. S.H. Kress & Co., 398 U.S.144, 152 (1970) that:

"private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of par. 1983 actions.

Defendant's possible claim that Dennis case is different in some aspects from the case at hand can be easily rebutted.

While it is true that Respondents in Dennis filed their 1983 action after the Texas appellate court dissolved the state's court injunction as having been illegally issued, in the case at hand, the Plaintiffs need not be required to wait for the Appeals Court to dissolve the illegally issued orders of the Probate Court, because these orders issued by the court acting on cases dismissed, appealed and pending before another state court, are void as a matter of law. Filing a notice of appeal divests the trial court of jurisdiction over matters pending on appeal. Orders rendered by a court lacking subject matter jurisdiction are void.

In addition, the judge in Dennis (no matter how corrupt) acted within his jurisdiction, that is why (a) the judge's order (although illegally issued) was valid and had to be vacated; (b) the judge could be protected by judicial immunity.

The differences between Dennis and the Probate Court scheme subject of the Plaintiffs' 1983 claim, work in favor of the Plaintiffs.

Therefore, the conclusions reached by the Court in Dennis do hold true in the matter at hand.

II. Since the U.S. District Court had jurisdiction over Plaintiffs' federal question claims brought under 42 U.S.C. 1983, the U.S. District Court also had jurisdiction to hear Plaintiffs' related claims under the statute of supplemental jurisdiction.

Under the federal question statute, 28 U.S.C. section 131, the original jurisdiction of the federal district courts is triggered if the action "aris[es] under the Constitution, laws, or treaties of the United States."

The Plaintiffs brought their District Court action under the 42 USC, par. 1983, pursuant to 28 U.S.C. par. 1331. Once the original jurisdiction is established, as it is in the matter at hand, related state claims can be heard by the federal court.

As early as in 1824, the U.S. Supreme Court adopted a broad view regarding the constitutional scope of federal question jurisdiction. In Osborn v. Bank of the United States, 22 U.S. 738, 6 L.Ed. 204 (1824), the Court held that Congress could grant the federal courts jurisdiction over "a whole case," as long as a federal question is an "ingredient in the original cause" asserted.

In United Mine Workers of America v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed. 2d 218 (1966), the Court endorsed the use of pendent claim jurisdiction which included not only the claim arising under federal law but also other claims based entirely on state law arising from the same set of circumstances, the same "common nucleus of operative facts." In Gibbs, supra, the Supreme Court held, "[u]nder the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged."

This trend was formalized in 1990 when U.S. Congress enacted the supplemental jurisdiction statute, 28 U.S.C. Paragraph 1367.

In relevant part, paragraph 1367 (a) reads: "[...] in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

In the matter at hand, all of the Plaintiffs' claims do arise from the same set of circumstances and stem from the same "common nucleus of operative facts."

Therefore, since the federal question jurisdiction is established, the Plaintiffs have the right to present their state law claims for the District Court's consideration as a matter of law.

CONCLUSION

The U.S. District Court does have jurisdiction over the federal question action filed by the Plaintiffs, and therefore, pursuant to the doctrine of supplemental jurisdiction, the District Court has jurisdiction over all claims presented by the Plaintiffs in their Complaint.

Therefore, the dismissal of the Plaintiffs' Complaint was erroneous as a matter of law.

Respectfully submitted Pro Se

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Dated: December 22, 2005

CERTIFICATE OF SERVICE

We, Chester and Malgorzata Chalupowski, hereby certify that on this date two true copies of the foregoing Reply Brief were served upon the Defendant/Appellee, Sharon D. Meyers, by delivery to her place of business.

Chester Chalupowski Malgorzata Chalupowski